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ordinarily prudent adult persons under the circumstances. *Sullivan* v. *Chadwick,* (Mass., 1920) 127 N. E. 633.

There has been much conflict in the authorities as to whether or not the negligence of the parents would be imputed to the child, in an action brought by it. The great weight of modern authority is, that such negligence will not be imputed to the child. See cases in 110 Am. St. Rep. 283. The earlier Massachusetts cases laid down the strict rule that the negligence of the parents would be imputed to the child so as to defeat a recovery by it. *Casey* v. *Smith,* (1890), 152 Mass. 294, *Cotter* v. *Lynn & B. R. R.* (1901), 180 Mass. 145. Later Massachusetts cases modified the strict rule of the earlier cases, and held as in the principal case, that the child could recover, even though its parents were negligent, if it did nothing which would be considered careless if its movements were directed by an adult person of ordinary prudence. *Wiswell* v. *Doyle* (1893), 160 Mass. 42, *Miller* v. *Flash Chemical Co.* (1918), 230 Mass. 419. The Massachusetts court again applies a strict rule in requiring a child of tender years to exercise the same standard of care as is required of adult persons. In the majority of jurisdictions in this country the plaintiff would have recovered upon the facts of the principal case. The trial court found a verdict for plaintiff, so it must have been shown that defendant was negligent. The negligence of the parents would not be imputed to the child. *Zarzona* v. *Neve Drug Co., et al* (1919), — Cal. —, 179 Pac. 203. The child would not be held to the degree of care required of adult persons, but only to that degree of care commensurate with its age, experience, and understanding, *Lawrence* v. *Portland Ry. Light & Power Co.* (1919), — Ore. —, 179 Pac. 485, and some courts hold that up to the age of seven years a child is incapable of such conduct as well constitute contributory negligence. *McDonald* v. *City of Spring Valley* (1918), 285 Ill. 52, *Quirk* v. *Metropolitan St. Ry. Co.* (1919), — Mo. App. —, 210 S. W. 103.

NUISANCE—BALANCE OF CONVENIENCE—SMELTING COMPANIES—COURT OF EQUITY RECOGNIZES WARTIME NECESSITY.—Upon a bill to enjoin the operation of certain smelters on the ground that such operation constituted a nuisance, the court found the sulphur fumes emitted in the "smoke stream" of the defendants to be injurious to the crops of the plaintiffs and to be an unlawful interference with the rightful enjoyment of their homes. The trial was closed in 1917. Pending the prosecution of the war no decree was made, the court considering "that the plaintiffs could very well endure some discomfort and take the chance of economic loss in the public interest." Now *held,* that though the industry to be enjoined be a valuable one, the private right to be free from noxious fumes in the air and the injuries to crops incident to fumes is sufficient ground for an injunction forbidding the operation of defendant's smelters. *Anderson* v. *American Smelting and Refining Co.* (U. S. D. C. Utah, 1919), 265 Fed. 928.

Since all the factors in the case remained constant, save the element of public convenience, the successive rulings of the court are a demonstration that the doctrine of balance of convenience is essentially one of balance, the

application of which depends upon the precise weight of the elements which fall into each pan of the scales. And it may be doubted whether some of the courts which have wholly repudiated the doctrine might not yield to it if confronted with the circumstances which were first presented in the principal case. Yet it might be argued that those particular circumstances arising out of the conduct of the war are such as no court should take into account. In *Driver* v. *Smith,* 104 Atl. 717, the court said that it would not refuse specific performance of a contract on the ground that its enforcement would be detrimental to a war industry, saying that "It would be an intolerable situation if each court before whom the rights of individuals were to be litigated permitted to determine whether the relief should be granted or withheld upon its opinion as to whether the granting of the injunction would aid or injure the government in its war activities." Approved in 17 MICH. L. REV. 376. And the decision in *Rosenwasser Bros., Inc.,* v. *Pepper,* 172 N. Y. Sup. 310, that the court might enjoin a strike merely on the ground that it interfered with the prosecution of the war, was adversely criticised in 32 HARV. L. REV. 376. These arguments, however, are but a restatement of the objection to the whole doctrine of the balance of convenience, that it is for the courts to give their remedies solely upon the basis of existing legal rights, and for the legislature to vary these rights, if the occasion requires. It is, however, by many courts, held a proper ground for refusing an injunction against nuisance. 18 MICH. L. REV. 703. Yet, it may be conceded, if the doctrine is to be accepted at all, there is no reason why the court should not consider, with all the other elements in the case, the peculiar public interest growing out of the prosecution of the war.

NUISANCE—FUNERAL HOME IN RESIDENTIAL DISTRICT.—An undertaker purchased and used as a funeral home a dwelling house in an exclusively residential district. The spirits of the residents were depressed, their comfort and enjoyment interfered with, and their property depreciated in value. *Held,* a nuisance which may be enjoined. *Beisel, et al* v. *Crosby* (Neb., 1920), 178 N. W. 272.

In the early case of *Westcott* v. *Middleton,* 43 N. J. Eq. 478, where under similar circumstances an injunction was refused, the court emphasized the fact that the discomfort complained of was not produced through the medium of the senses. A group of recent cases illustrates the tendency of the courts to disregard this requirement and to recognize that mental distress and depression, as well as physical discomfort may interfere with the comfortable enjoyment of property. In the following cases injunctions were granted against undertaking establishments in residential districts, though there were no noxious odors and no danger of disease. *Densmore* v. *Evergreen Camp No. 147,* 61, Wash. 230; *Saier* v. *Joy,* 198 Mich. 295; *Goodrich* v. *Starrett,* 184 Pac. 220. Injunctions against private hospitals and asylums have frequently been granted on substantially the same grounds. *Barth* v. *Christian Psychopathic Hosp. Assn.,* 163 N. W. 62; *Everett* v. *Paschall,* 61 Wash. 47. For recent cases holding valid ordinances declaring it unlawful to maintain undertaking